D.B. Special Appeal (Writ) No.19/1996.
(Krishnalal Vs. State of Rajasthan & Others)

06.12.2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Sudesh Kumar Gupta for the appellant.
Mr. L.R. Upadhyay, Dy. G.A.

Heard learned counsel for the parties.

The land in question which is situated in village Chak 13 MD, Murabba 82/33 was allotted to the petitioner-appellant Lekh Ram who was resident of village Chak 13 MD in Tehsil Anupgarh vide allotment letter dated 20.09.1974 in response to his application. The allotment was made of 20 bigha of land (light loom) in Murabba 82/33 which was in command area.

A notice was issued to the petitioner appellant under Section 14 of the Rajasthan Colonisation Act calling upon him to show cause as to why the allotment made in his favour be not cancelled. The said notice was issued on 02.04.1979. By order dated 25.09.1979 the allotment was cancelled on the ground that since the allotment the petitioner himself is not cultivating the land and has let it out to Sahiram on the basis of sharing the crop 50 – 50.

The appellant petitioner denied the allegation of

transferring the possession of the land in question for securing its cultivation on share basis and asserted that he himself is cultivating the land though he admitted that he does not have any residence in the Chak and he is living in another village alongwith his family but he contended that he is regularly coming to supervise the cultivation through labourers and procured tractor and other requisite materials on rent. He also furnished evidence of two cultivators of adjoining fields to corroborate his contention that he is in cultivatory possession of the land in question since allotment.

However, the allotting authority having taken into consideration the enquiry conducted by him rejected the contention of the appellant-petitioner by discarding the evidence produced by him and cancelled the allotment made in favour of the petitioner on 25.09.1979.

In appeal before the Revenue Appellate Authority, it was specifically contended that fair opportunity was not given to the petitioner and the finding recorded by the allotting authority is based on an enquiry conducted behind his back. The Revenue Appellate Authority recorded a specific finding that this contention of the appellant-petitioner is correct that the enquiry on the basis of which the finding was reached was conducted at the back of the petitioner and could not be taken into consideration. But, ironically the appellate authority confirmed the

finding by referring to the same enquiry and that order is also confirmed by the Board of Revenue.

The writ petition filed by the petitioner was dismissed by the learned Single Judge vide judgment under appeal on the ground that the finding recorded by the revenue authorities is finding of fact and the petitioner was given adequate opportunity to defend his allotment and as such the orders passed by the revenue authorities do not suffer from any infirmity merely because the evidence led by the petitioner to prove his personal cultivation was not taken into consideration.

Having given our careful consideration and gone through the material on record and in view of the undisputed fact that before cancelling allotment enquiry was conducted at the back of the appellant and he was not given prior notice, we are satisfied that the statements recorded during the course of enquiry were recorded at the back of the appellant and that material was used while cancelling the allotment order. Not only this, the Revenue Appellate Authority categorically found that the enquiry was conducted at the back of the petitioner which material could not be used against the petitioner and despite that committed the same error for buttressing the finding that the appellant petitioner has committed breach of the condition of allotment. Notwithstanding the finding arrived at by the Revenue Appellate Authority on the question of vitiation of the cancellation

proceedings and the order of Revenue Appellate Authority came to be confirmed by the Board of Revenue as well.

In our opinion, the learned Single Judge has clearly erred in not noticing the apparent error which goes to the root of the matter about the breach committed by the petitioner of the terms of allotment. If the material taken into consideration for rejecting the evidence led by the petitioner is the outcome of enquiry conducted at the back of the petitioner it is well nigh impossible to sustain the order evicting the petitioner by taking into consideration the material which could not have been gone into consideration at all. The law is well settled where the finding is based on inadmissible evidence or on the basis of material collected at the back of the petitioner which is breach of fundamental rule of natural justice and fair procedure, the findings stand vitiated and result into error apparent on the face of record. We are, therefore, of the opinion that the petitioner is entitled to succeed for the simple reason that the impugned orders passed by the revenue authorities are in total breach of the principles of natural justice affecting the petitioner's rights without giving him fair opportunity to explain that material. If the said material is excluded from consideration there is nothing to reject petitioner's evidence.

Consequently, the appeal is allowed and the impugned judgment/order passed by the learned Single

Judge is set aside. The writ petition is allowed and the impugned orders referred to above are quashed. The petitioner's allotment vide allotment order dated 20.09.1974 remains unaffected. Since the petitioner is legal representative of Lekhram, original allottee, the petitioner is free to move the competent authorities for making necessary alteration in the revenue record.

There shall, however, be no order as to costs.

(Gopal Krishan Vyas)J. (Rajesh Balia) J.

Ojha, a.